

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re:

TAMMY PREVO,

Debtor.

Case No. 2:21-cv-01701-TL

Bankruptcy No. 21-10961-MLB

VIRGINIA ANDREWS-BURDETTE,  
Trustee of the Estate of Tammy Prevo,

Plaintiff,  
JAN BONIFACE JR.,

Involuntary Plaintiff,

v.

NORMAND HAMELIN and JANE DOE  
HAMELIN, husband and wife and the  
marital community composed thereof,

Defendants.

Adversary 21-01062-MLB

ORDER GRANTING MOTION TO  
WITHDRAW THE REFERENCE WITH  
REFERRAL TO BANKRUPTCY COURT  
FOR PRETRIAL MATTERS

This matter comes before the Court on Defendant Normand Hamelin's Motion for Withdrawal of Reference. Dkt. No. 1-1 at 3–8. Plaintiff Virginia Andrews-Burdette (Trustee for the estate of Debtor Tammy Prevo) requests the Court to deny the motion or, alternatively, to allow the Bankruptcy Court to continue to preside over all pre-trial matters by delaying withdrawal of the reference until the matter is ready for trial. Dkt. No. 1-1 at 20–21. Plaintiff does not dispute that Defendant is entitled to trial by jury before this Court. *See id.* Upon consideration of the parties' briefing and the relevant record, for the reasons below, the Court GRANTS the motion and immediately REFERS this case to the Honorable Marc Barreca, Chief U.S. Bankruptcy Judge, for all pretrial matters.

#### **I. RELEVANT BACKGROUND**

Debtor Tammy Prevo filed a Chapter 7 bankruptcy petition on May 17, 2021, and Plaintiff initiated an adversary proceeding before the Bankruptcy Court on October 8, 2021, to avoid and recover alleged fraudulent transfers of real property that left Debtor insolvent. Dkt. No. 1-1 at 11, 14. Defendant Hamelin demanded a jury trial in the answer to the adversary complaint. *Id.* at 17.<sup>1</sup> Defendant Hamelin does not consent to the Bankruptcy Court conducting the jury trial. *See id.*; *see also id.* at 5. Chief U.S. Bankruptcy Judge Barreca recommended that the District Court withdraw the reference and refer the matter back to him for pretrial proceedings. *Id.* at 30.

#### **II. DISCUSSION**

A district court has authority to withdraw a reference to a bankruptcy court, in whole or in part, for cause shown. 28 U.S.C. § 157(d). A bankruptcy court cannot enter a final judgment in an action in which at least one party to the action does not consent to its final adjudication of

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<sup>1</sup> Though the adversary proceeding was filed against both Defendant Hamelin and his wife, Defendant Hamelin stated in his answer that he is widowed. Dkt. No. 1-1 at 16.

1 matters that are ‘non-core’ to the proceeding, or where a party has demanded a jury trial. *See Sec.*  
2 *Farms v. Int’l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th  
3 Cir. 1997) (defining ‘non-core proceedings’ as “actions that do not depend on bankruptcy laws  
4 for their existence and that could proceed in another court”); *In re Cinematronics, Inc.*, 916 F.2d  
5 1444, 1449 (9th Cir. 1990) (concluding that “bankruptcy courts cannot conduct jury trials on  
6 noncore matters, where the parties have not consented”).

7       Though “proceedings to determine, avoid, or recover fraudulent conveyances” are  
8 statutorily defined as ‘core’ proceedings that bankruptcy judges may hear and determine, 28  
9 U.S.C. § 157(2)(H), they cannot be finally adjudicated by a bankruptcy court “as a constitutional  
10 matter.” *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 30–31 (2014). Although fraudulent  
11 transfer claims are treated as ‘non-core,’ if they are “otherwise related to a case under title 11,”  
12 U.S.C. § 157(c)(1), a bankruptcy court may “hear and enter proposed findings of fact and  
13 conclusions of law” in the proceeding, “subject to de novo review [and a final judgment  
14 rendered] by a federal district court.” *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553, 566 (9th  
15 Cir. 2012), *aff’d sub nom. Exec. Benefits*, 573 U.S. 25.

16       Defendant has made a jury trial demand in his answer. Dkt. No. 1-1 at 17. The  
17 bankruptcy court cannot conduct a jury trial in this action because Defendant has not consented,  
18 and the verdict would be rendered on non-core matters. *In re Cinematronics*, 916 F.2d at 1451.  
19 Thus, withdrawal of the reference is appropriate on this ground alone. *Id.* (describing the  
20 conundrum in which district courts would be in if they were to review bankruptcy court jury  
21 verdicts on non-core matters, given that 28 U.S.C. § 157(c)(1) requires *de novo* review of such  
22 matters, but a district court cannot re-examine facts tried by a jury in that manner).

23       However, the Ninth Circuit has recognized that a party’s Seventh Amendment right to a  
24 jury trial is not abridged by a bankruptcy court’s retention of jurisdiction “over *pre-trial*

1 matters.” *In re Healthcentral.com*, 504 F.3d 775, 787 (9th Cir. 2007) (emphasis in original)  
2 (internal citations omitted). Even where it withdraws the reference, a district court may  
3 nonetheless simultaneously refer all pre-trial matters back to a bankruptcy court. *See, e.g.*,  
4 *Burdette v. Emerald Partners LLC*, No. C15-0816-JCC, 2015 WL 4394859, at \*2 (W.D. Wash.  
5 July 16, 2015). This would promote judicial economy given the bankruptcy court’s “unique  
6 knowledge of Title 11.” *In re Healthcentral.com*, 504 F.3d at 787–88. Indeed, “[o]nly by  
7 allowing the bankruptcy court to retain jurisdiction over the action until *trial is actually ready* do  
8 we ensure that our bankruptcy system is carried out.” *Id.* at 788 (emphasis in original) (internal  
9 citation omitted).

### 10 III. CONCLUSION

11 For the foregoing reasons, Defendant’s Motion to Withdraw the Reference (Dkt. No. 1-1  
12 at 3–8) is GRANTED. The Court also immediately REFERS this case to Chief U.S. Bankruptcy  
13 Judge Barreca for all pretrial proceedings in accordance with this Order.

14 IT IS SO ORDERED.

15 Dated this 17th day of March 2022.

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18 Tana Lin  
19 United States District Judge  
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